

1 Daniel A. Lev (CA Bar No. 129622)
dlev@sulmeyerlaw.com

2 **SulmeyerKupetz**
A Professional Corporation

3 333 South Grand Avenue, Suite 3400
Los Angeles, California 90071-1406
4 Telephone: 213.626.2311
Facsimile: 213.629.4520

5 Ronald Richards (CA Bar No. 176246)
6 ron@ronaldrichards.com

7 Law Offices of Ronald Richards & Associates, APC
P.O. Box 11480
8 Beverly Hills, California 90213
Telephone: 310.556.1001
Facsimile: 310.277.3325

9 Attorneys for Shady Bird Lending, LLC

10

11 **UNITED STATES BANKRUPTCY COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**

13 In re

14 THE SOURCE HOTEL, LLC,

15 Debtor.

Case No. 8:21-bk-10525-ES

Chapter 11

16 **RESPONSE OF SHADY BIRD LENDING,
LLC TO MOTION FOR ENTRY OF AN
ORDER (A) AUTHORIZING DEBTOR TO
USE CASH COLLATERAL; AND (B)
AUTHORIZING DEBTOR TO OBTAIN
POST-PETITION FINANCING FROM
M+D PROPERTIES ON AN UNSECURED
BASIS**

17 DATE: June 10, 2021

18 TIME: 10:30 a.m.

19 PLACE: Courtroom "5A"

20

21

22

23

24

25

26

27

28

1 Shady Bird Lending, LLC ("Shady Bird") hereby submits its "Response of
2 Shady Bird Lending, LLC to Motion for Entry of An Order (A) Authorizing Debtor to Use
3 Cash Collateral; and (B) Authorizing Debtor to Obtain Post-Petition Financing From M+D
4 Properties On An Unsecured Basis" (the "Response"), in response to the "Notice of
5 Motion and Motion for Entry of An Order (A) Authorizing Debtor to Use Cash Collateral;
6 and (B) Authorizing Debtor to Obtain Post-Petition Financing From M+D Properties On
7 An Unsecured Basis; Declaration of Donald Chae in Support Thereof" (the "Motion"), filed
8 by the debtor and debtor in possession, The Source Hotel, LLC (the "Debtor"), and
9 represents as follows:

10 I.

11 **PREFATORY STATEMENT**

12 Similar to the Debtor's first request for limited post-petition financing from its
13 affiliated entity, Shady Bird does not oppose the relief sought by the Motion, although it
14 once again objects to the false narrative being presented by the Debtor. Heeding the
15 Court's directive, Shady Bird will restrain itself from recounting the multitude of
16 misrepresentations in the Motion meant to lead this Court to believe that the Debtor's
17 project is on the eve of completion, and, but for the conduct of Shady Bird and its
18 predecessor, Evertrust, it would have been completed by now.¹ As Shady Bird already
19 has demonstrated, each of these claims is untrue. Nevertheless, Shady Bird does not
20 oppose the limited relief sought in the Motion since it will again provide some measure of
21 assurance that the project is insured and utilities remain active at the site.

22 II.

23 **SHADY BIRD DOES NOT OPPOSE THE LIMITED RELIEF SOUGHT**
24 **BY THE MOTION**

25 Through its Motion, the Debtor seeks the following limited form of relief:

26 _____
27 ¹ Unless otherwise stated, the use of capitalized terms herein shall have the meaning ascribed to them in
the Motions.

28

1 • Authority to obtain a DIP Loan from M+D, on a general unsecured
2 basis, in a sum up to \$80,000, as necessary and at the discretion of M+D, to cover any
3 shortfalls in the Budget, and

4 • Use of cash collateral (consisting of the balance of the previously
5 turned over account funds from Evertrust and any additional funds borrowed from M+D
6 pursuant to this Motion), on an interim basis, according to the four-month Budget affixed
7 to the Motion.²

8 As noted, the Motion merely contemplates a second unsecured, interest
9 free loan from Debtor M+D according to the same basic terms as previously approved by
10 the Court. This includes M+D acknowledging that it is not being granted a lien or
11 administrative expense claim against the estate. In addition, Shady Bird notes that the
12 proposed order attached to the Motion tracks the prior version approved by the Court.
13 Similar to its predecessor, the proposed order includes certain protections for Shady Bird
14 and provides that the order is without prejudice to the request of Shady Bird for any
15 modification of, or further or different, adequate protection.³ Under these circumstances,
16 and to the extent the use of the funds is limited to the line items set forth in the Budget,
17 Shady Bird does not oppose the request.⁴

18

19

20

21

2 ² Although the preface and prayer of the Motion indicate that the maximum amount available under this
2 second DIP loan is \$80,000, the Motion also states that M+D will provide the Debtor with post-petition
23 financing in an amount up to \$100,000 on a general unsecured and as-needed basis, subject to the
discretion of M+D. See Motion, p. 12-13, ll. 27-2. Shady Bird presumes the reference to a \$100,000 loan
24 is a typographical error, but the Debtor should verify this inconsistency and confirm the exact amount M+D
intends to loan through this Motion.

25 ³ Shady Bird again disclaims the Debtor's representation regarding the value of its assets or that Shady
Bird is adequately protected by an equity cushion.

26 ⁴ Shady Bird expressly reserves the right to amend or supplement this Response, to file additional
objections, and to introduce evidence supporting this Response and any other objections at any further
27 hearing on the Motions. In addition, Shady Bird expressly reserves all rights of Shady Bird under its loan
agreement.

28

1 III.
2

CONCLUSION

3 Based on the foregoing, Shady Bird does not oppose the Motion provided it
4 is limited to the relief set forth in the proposed order.

5 DATED: May 27, 2021

SulmeyerKupetz
A Professional Corporation

8 By: /s/ Daniel A. Lev

9 Daniel A. Lev
Attorneys for Shady Bird Lending, LLC

10 DATED: May 27, 2021

Law Offices of Ronald Richards & Associates, APC

12 By: /s/ Ronald Richards

13 Ronald Richards
14 Attorneys for Shady Bird Lending, LLC

SulmeyerKupetz, A Professional Corporation
333 SOUTH GRAND AVENUE, SUITE 3400
LOS ANGELES, CALIFORNIA 90071-1406
TEL. 213.626.2311 • FAX 213.629.4520

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 333 South Grand Avenue, Suite 3400, Los Angeles, CA 90071.

A true and correct copy of the foregoing document entitled (*specify*): **RESPONSE OF SHADY BIRD LENDING, LLC TO MOTION FOR ENTRY OF AN ORDER (A) AUTHORIZING DEBTOR TO USE CASH COLLATERAL; AND (B) AUTHORIZING DEBTOR TO OBTAIN POST-PETITION FINANCING FROM M+D PROPERTIES ON AN UNSECURED BASIS** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) May 27, 2021, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

See Attached

Service information continued on attached page.

2. SERVED BY UNITED STATES MAIL:

On (date) , I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page.

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) May 27, 2021, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Via Overnight Mail

The Honorable Erithe A. Smith
U.S. Bankruptcy Court
Ronald Reagan Federal Building
411 W. Fourth Street, Suite 5040
Santa Ana, CA 92701

Service information continued on attached page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

May 27, 2021

Date

Cheryl Caldwell

Printed Name

/s/Cheryl Caldwell

Signature

ADDITIONAL SERVICE INFORMATION (if needed):

1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")

Ron Bender on behalf of Debtor The Source Hotel, LLC
rb@lnbyb.com

Christopher G. Cardinale on behalf of Creditor City Of Buena Park
ccardinale@agclawfirm.com

Michael G Fletcher on behalf of Creditor Evertrust bank
mfletcher@frandzel.com, sking@frandzel.com

Amir Gamlie on behalf of Interested Party Courtesy NEF
amir-gamlie-9554@ecf.pacerpro.com, cmallah@perkinscoie.com;DocketLA@perkinscoie.com

Robert P Goe on behalf of Creditor Westranco, Inc.
kmurphy@goeforlaw.com, rgoe@goeforlaw.com;goeforecf@gmail.com

Nancy S Goldenberg on behalf of U.S. Trustee United States Trustee (SA)
nancy.goldenberg@usdoj.gov

Peter F Jazayeri on behalf of Interested Party Cordes & Company, by and through Bellann Raile
peter@jaz-law.com

Peter F Jazayeri on behalf of Other Professional Cordes & Company, by and through Bellann Raile
peter@jaz-law.com

Daniel A Lev on behalf of Creditor Shady Bird Lending, LLC
dlev@sulmeyerlaw.com, ccaldwell@sulmeyerlaw.com;dlev@ecf.inforuptcy.com

Daniel A Lev on behalf of Interested Party Courtesy NEF
dlev@sulmeyerlaw.com, ccaldwell@sulmeyerlaw.com;dlev@ecf.inforuptcy.com

Grant A Nigolian on behalf of Interested Party Courtesy NEF
grant@gnpclaw.com, process@gnpclaw.com;grant.nigolian@gmail.com

Juliet Y Oh on behalf of Debtor The Source Hotel, LLC
jyo@lnbrb.com, jyo@lnbrb.com

Ho-El Park on behalf of Interested Party Courtesy NEF
hpark@hparklaw.com

Ronald N Richards on behalf of Creditor Shady Bird Lending, LLC
ron@ronaldrichards.com, morani@ronaldrichards.com

Ronald N Richards on behalf of Interested Party Courtesy NEF
ron@ronaldrichards.com, morani@ronaldrichards.com

United States Trustee (SA)
ustpregion16.sa.ecf@usdoj.gov